

The Honorable RONALD B. LEIGHTON  
U.S. Magistrate Judge DAVID W. CHRISTEL

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA**

JOHN EDWARD BETTYS,

Petitioner,

v,

JOHN HAMILL, et al.,

Respondent,

**NO. 3:20-cv-05078-RBL-DWC**

**PLAINTIFF'S RESPONSE TO THE  
DEFENDANT'S MOTION TO DISMISS  
SECOND AMENDED COMPLAINT  
(Fed. R. Civ. P. 12(b)(6))  
(Dkt. No. 77)**

**CALENDAR: February 12, 2021**

**I. INTRODUCTION**

John E. Bettys, Plaintiff, pro se, brought an second amended complaint, while committed civilly at the mental health hospital under Wash. Rev. Code Ch. 71.09. The complaint also invokes Court's authority pursuant to 42 U.S.C.A. §12101; 42 U.S.C.A. §12103; 42 U.S.C.A. §12183 under Title II and Title III of the Americans with Disabilities Act of 1990 federal statutes (herein after the "ADA" and/or 29 U.S.C.A. 701 et. Seq of the Rehabilitation Act of 1973 federal statutes (herein after the "RA"). Plaintiff brought the second amended complaint in good faith showing 30 enumerated claims listing how each Defendant acted with prior knowledge in violation of Bettys' established federal and/or state Constitutional rights during his civil confinement for deviancy treatment.

1 The Defendants each have requisite knowledge or understanding of Bettys required  
 2 special considerations, accommodations, modifications, for his custody and care in the form  
 3 of ADA compliant housing, ADA compliant toilets, ADA compliant showers, ADA compliant  
 4 doors, ADA compliant hand rails, ADA compliant seating which all is federally required  
 5 provided under the federal ADA statutes since Bettys arrived at the mental hospital back in  
 6 2015. In fact, the State of Washington through its agencies and employees did in past years  
 7 placed ADA compliant accommodation equipment into (1) Program Area 3 living unit; (2)  
 8 recreation center; multi-purpose building and (3) visitation room to ensure Bettys could  
 9 legally toilet himself; shower himself; enter and leave by himself; and seat himself; attend  
 10 education classes; and attend treatment groups properly in those areas of the facility.

11 On November 24, 2019, while knowing Bettys required the specific ADA and RA  
 12 accommodations under the federal statutes to avoid discrimination against Bettys in his daily  
 13 life in the mental health hospital Bettys was subjected to non-compliant housing on the  
 14 Program Area-1 living unit, which discriminated against Bettys by removing his ability to  
 15 shower himself; toilet himself; move about without staff assistance in opening doors; or take  
 16 his wheelchair into his assigned room in Program Area-1 in violation of the ADA and/or RA  
 17 statutory requirements, as to treat Bettys differently by making him walk across compound to  
 18 shower or toilet himself when no other resident within the entire facility is being required to  
 19 do so because all other residents are provided proper showers and toilets to meet their needs  
 20 on their living unit is clearly discrimination against Bettys. The Plaintiff is a civil confined  
 21 person with all his United States Constitutional rights remaining intact, not allowed to be  
 22 subjected to any forms of punishment of any type and for any reason during his present civil  
 23 mental health confinement. *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982); *Jones v. Blanas*,  
 24 393 F.3d 918, 926 (9<sup>th</sup> Cir. 2004). The 2019 Behavioral Management Report(BMR) being  
 25 issued immediately imposed punishment against Bettys by moving him to non-ADA and/or  
 26 non-RA compliant housing without even the required minimal due process protections of a

1 institutional disciplinary hearing held to establish Bettys guilty of some rule violation, which  
 2 clearly violates every aspect of the *Youngberg* and *Blanas* standards outright, as no  
 3 punishments of any type may be imposed during Bettys' present civil confinement, yet Bettys  
 4 lost his institutional level almost a year to date, lost his treatment phase for almost a year to  
 5 date and lost his ADA compliant housing assignment before the punitive BMR was later  
 6 dismissed against Bettys finding he did nothing wrong, which establishes a clear punitive  
 7 nature to each of those losses/removals, without basis for such actions by the State of  
 8 Washington's employees.

9 The Defendants are all employed by the Department of Social and Health  
 10 Services(DSHS), the agency entrusted with daily operation of the civil mental health hospital  
 11 commonly named the Special Commitment Center (SCC). The defendants have moved the  
 12 Court under Fed. R. Civ. P. 12(b)(6) to dismiss some of the stated claims against themselves  
 13 for various reasons. The Defendant's motion must now be denied entirely.

## 14 II. LEGAL STANDARDS

### 15 A. Fed. R. Civ. P. 12(b)(6)

16 A motion made pursuant to Fed. R. Civ. P. 12(b)(6) should be granted only if the  
 17 Plaintiff "fail[s] to state a claim upon which relief may be granted." See *Bell Atl Corp. v.*  
 18 *Twombly*, 550 U.S. 544, 555 (2007)(citation and quotes omitted). The "dismissal is proper  
 19 only when the complaint either (1) lacks a cognizable legal theory or (2) fails to allege  
 20 sufficient facts to support a cognizable legal theory." See *Zixiang Li v Kerry*, 710 F.3d 995,  
 21 999 (9<sup>th</sup> Cir. 2013). To survive a motion to dismiss, a complaint must contain sufficient  
 22 factual matter, when accepted as completely true in the light most favorable to a non-moving  
 23 party, states a claim to relief that is plausible on its face. See *Ashcroft v. Iqbal*, 556 U.S. 662,  
 24 678 (2009)(quoting *Twombly*, 550 U.S. at 570). A claim is facially plausible "when the  
 25 plaintiff pleads factual content that allows the Court to draw the reasonable inference that the  
 26 defendant is liable for the misconduct alleged." *Twombly*, 550 U.S. at 678. The Courts shall

1 construe all pro se pleadings liberally under a Fed. R. Civ. P. 12(b)(6) motion to dismiss. See  
 2 *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct 594 (1972).

### 3 **B. Americans With Disabilities Act**

4 The ADA and/or RA claims fall squarely within the four corners of there own portion  
 5 of federal statutory law, separated from any standard §1983 requirements and/or settled  
 6 limitations. The ADA and/or RA standards allow for claims filed in the “official capacity” to  
 7 proceed against state agents for monetary damages against the state agents as arms of the  
 8 state when proven the acts are deliberate ADA and/or RA violations. “Title II of the ADA  
 9 statutes authorize suits by private citizens for money damages against public entities,” *United*  
 10 *States v. Georgia*, 546 U.S. 151, 153, 163 L.Ed,2d 650 (2006), and state “prisons fall  
 11 squarely within the statutory definition of ‘public entity,’” *Pennsylvania Dept. of Corr. v.*  
 12 *Yeskey*, 534 U.S. 206, 141 L.Ed.2d 215 (1998). The state is responsible for providing inmates  
 13 with “the fundamentals of life, such as sustenance, the use of a toilet, and bathing facilities,  
 14 and elementary mobility and communication, the ADA requires these “opportunities” be  
 15 provided to disabled inmates “to the same extent that they are provided to all other detainees  
 16 and prisoners.” *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1062 (9<sup>th</sup> Cir. 2010), see also  
 17 *Pierce*, 526 F.3d at 1220 (finding ADA violation where defendant failed to articulate “any  
 18 legitimate rationale for maintaining inaccessible bathrooms, sinks and showers and other  
 19 fixtures in the housing areas and common spaces assigned to mobility and dexterity-impaired  
 20 detainees.”) The law is settled with regards to provision of ADA and RA accommodations.

## 21 **III. RESPONSE TO ARGUMENTS**

### 22 **A. Adequacy of Specific Claims Raised by Mr. Bettys**

#### 23 **1. Mr. Bettys failed to state a claim of inadequate treatment during the time he** 24 **resided on Program Area One**

25 The Defendant's motion to dismiss in part attempts to confuse both Bettys and the  
 26 Court by convoluted combining of two distinctly different causes of action standards of  
 review into three single arguments of Mr. Bettys' claims. Therefore, Bettys shall attempt to

1 separate the responses into two separate legal categories for Courts consideration, which are  
 2 (a) the arguments on ADA and RA claims and (b) arguments under the §1983 standards.

3 **(a) Arguments Under the ADA and/or RA Cause of Action Standards Regarding**  
 4 **Bettys' Housing on Program Area One**

5 The highest Court of our land has determined any ADA and/or RA cause of action  
 6 raised in a lawsuit by a person confined is independent of all §1983 standards when brought  
 7 under the federal ADA and/or RA statutes, wherefore, the State of Washington Agency  
 8 becomes the real party in any ADA and/or RA cause of action, without having any normal  
 9 benefits of a state's grant of sovereign immunity from such lawsuits, when it said “[I]n so far  
 10 as Title II [of the ADA] creates a private cause of action for damages against the states for  
 11 conduct that actually violates the Fourteenth Amendment, Title II validly abrogates state  
 12 sovereign immunity.” *United States v. Georgia*, 546 U.S. 151, 159, 126 S.Ct. 877 (2006). The  
 13 highest Court in the United States fully considered and decided the standards of review when  
 14 lawsuits are brought under the ADA and/or RA causes of action by persons who are currently  
 15 confined for punishment by the various states, when it decided “However, the eleventh  
 16 amendment does not bar ADA suits against state officials in their official capacities for  
 17 injunctive relief and damages.” *Phiffer v. Columbia River Corr. Inst.*, 384 F.3d 791, 792-93  
 18 (9<sup>th</sup> Cir. 2004) “To recover money damages under Title II of the ADA, a plaintiff must prove  
 19 intentional discrimination on the part of the defendant. *Duvall v. County of Kitsap*, 260 F.3d  
 20 1124, 1138 (9<sup>th</sup> Cir. 2001).” . Therefore, the Defendants motion to dismiss improperly  
 21 attempts to elevate the requirements Bettys must meet in his initial pleading of claims under  
 22 the ADA and/or RA causes of action standards, whereby Bettys need not prove any acts were  
 23 the acts done deliberately or any element of deliberate discrimination to the acts, he need  
 24 only make a basic prima facia showing of some discrimination happened, intentional or not  
 25 intentionally to obtain the non-monetary relief in the form of an injunction and/or declaratory  
 26 judgment damages in the present case protecting him from any present or future similar  
 violations of his rights during his continued civil confinement for mental health treatment. In  
 fact, Bettys as a civil confined person is entitled to enjoy “More considerate conditions of  
 confinement than his criminal confined counterparts” that are addressed in the many prison



1 related ADA and/or RA cause of action cases. see *Youngberg v. Romeo*, 457 U.S. 307, 322  
 2 (1982); *Jones v. Blanas*, 393 F.3d 918, 926 (9<sup>th</sup> Cir. 2004). Prisoners are actually required  
 3 provided “accessible bathrooms, sinks, showers and other fixtures in the housing areas and  
 4 common areas assigned to mobility and dexterity impaired detainees” as part of the basic  
 5 fundamentals of life. *Pierce*, 526 F.3d at 1220(finding ADA violation where defendant failed  
 6 to articulate “any legitimate rationale for maintaining “inaccessible bathrooms, sinks,  
 7 showers and other fixtures in the housing areas and common areas assigned to mobility and  
 8 dexterity impaired detainees.”) The Plaintiff Bettys, as a civil detained person is entitled to  
 9 “more considerate treatment and conditions of confinement than his criminal counter parts”  
 are given access to under the ADA and/or RA statutes.

10 The Defendants in their motion to dismiss regarding the medical staff members over  
 11 looked the facts pleaded in the claims that show a clear act of discrimination to place Bettys  
 12 who is able bodied when a proper ADA and/or RA required accommodation is provided in a  
 13 position where he'd even require anyone's assistance in wiping his bottom, including a nurse's  
 14 assistance or any assistance in showering; or moving about, as when he is housed on Program  
 15 Area Three with the proper ADA and/or RA accommodations in place Bettys is fully capable  
 16 of toileting; showering; and moving himself about without anyone assistance on a daily basis,  
 17 which is not even addressed in the motion to dismiss by the moving parties. The acts of  
 18 actually denying Bettys reasonable necessary care by any staff member, including the  
 19 multiple nurses whom each did refuse to assist Bettys in meet is toileting; his showering  
 20 needs or his mobility needs while on Program Area One is another individual act of  
 21 discrimination under the ADA and/or RA statutes which at all times requires “reasonable  
 22 accommodations” provided to the disabled person, which includes a reasonable request for  
 23 someone to actually wipe the disabled person's bottom after toileting when the disabled  
 24 person is unable to reach himself to wipe his own bottom. No peer of Bettys' who is housed  
 25 in civil confinement at the SCC was placed into a position in their housing unit where they  
 26 could not wipe their own bottoms, was refuse assistance by the medical staff told to assist  
 them, only Bettys faced this type of egregious conduct and discrimination by the employees  
 of State of Washington hired to provide care for Bettys during his civil confinement. The

1 Defendants ask the Court ignore Bettys claim pleading the nurses refused to assist Bettys, as  
 2 they attempt to claim Bettys was actually assisted in toileting by all those nurses when he  
 3 requested assistance which is not true they each refused to assist Bettys. In the Defendants  
 4 motion to dismiss the Defendants agree Bettys stated a claim of discrimination for depriving  
 5 Bettys seating in the Program Area Three dayroom, yet Defendants go on to argue Bettys  
 6 failed to state a sufficient claim of discrimination for failing to provide Bettys seating in the  
 7 bathroom area of Program Area One living unit in the form of a proper ADA and/or RA  
 8 compliant toilet meeting Bettys specific disability needs, which is similar to the toilets his  
 9 peers have available on the living unit for their use. The defendants ask the Court here to  
 10 overlook the discrimination created in removing Bettys from the Program Area Three living  
 11 unit that had the proper ADA and/or RA toilets/showers installed to meet Bettys' known  
 12 disabilities, the discrimination in having to bare his genitals to other adult male and female  
 13 staff members during civil confinement to seek assistance in wiping his bottom, which only  
 occurred due to Bettys being deprived a proper toilet like he had in Program Area Three.

14 In the light most favorable to Bettys as the non-moving party this Court can clearly  
 15 see the required discrimination stated in each claim raised by Bettys to meet a prima facie  
 16 showing under the ADA and/or RA cause of actions standards as clearly established by the  
 17 highest Court in our land previously to warrant denial of the Defendant's motion to dismiss  
 18 on the basis of sufficient claims that a jury could rule in Bettys favor upon. Bettys need not  
 19 plead or prove the act is deliberate, or with any ill intent on the part of the Defendants, nor  
 20 must Bettys prove the act was not based in professional judgment under the ADA and/or RA  
 21 cause of action standards for a lawsuit seeking only prospective injunctive relief and/or  
 22 declaratory judgment relief. If the jury during trial determines Bettys does prove to their  
 23 satisfaction the conduct to be deliberate discrimination then the Court might choose to issue  
 24 some type of monetary damages the Court deems justified, even though Bettys is seeking no  
 25 monetary damages directly in his present lawsuit for himself, he clearly seeks only the  
 26 injunctive and declaratory relief that is automatically available when an ADA and/or RA  
 violation has occurred to ensure no further violations occur by the Defendant's choice to  
 house him in a building without proper modifications under Title III of the ADA.

**(b) Arguments Under §1983 Causes of Action Standards Regarding Bettys' Housing on Program Area One**

Since the Defendants clearly attempt to confuse the Court with use of convoluted pleadings addressing multiple distinctly different standards of review, Bettys shall touch on a basis for denying the Defendants motion to dismiss under §1983 cause of actions standards for the Court's benefit.

The §1983 cause of actions standards ensure the Defendants will never punish anyone confined civilly to obtain mere mental health treatment. *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982); *Jones v. Blanas*, 393 F.3d 918, 926 (9<sup>th</sup> Cir. 2004). The fact that Bettys criminal punishment sentence was completed before being committed to Defendant's civil facility removed Defendants authority and/or lawful ability to ever punish Bettys. The deprivation of access to Bettys' multiple reasonable ADA accommodations as a form of punishment of Bettys for obtaining a Behavioral Management Report (herein after "BMR") is an outright illegal act performed by the Defendants involved in violation of civil confinement protocols settled in both *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982); *Jones v. Blanas*, 393 F.3d 918, 926 (9<sup>th</sup> Cir. 2004), which contravened the long settled legal guideline on civil detainees being punished. These act border on actual criminal conduct by these Defendants when performed against a disabled person, whom without the reasonable accommodations cannot function properly by himself in day to day life. The Defendants seem to claim such criminal conduct and/or direct violations of the federal ADA and/or RA statutes is allowed from themselves against civil confined persons so long as they acted under a guise of exercising some form of professional judgment. The highest Court of the land did say that with regards to what course of mental health and sexual offender treatment is required to be provided civil confined persons to restore them for release the exercise of professional judgment is all that is required in the creation of such treatment. *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982).

The highest Court did not create in the individual state's agents the power to circumvent any of the established federal statutes, guideline and/or constitutional protections afforded to every civil confined person in either federal or state custody for mental health treatment under a guise of "professional judgment," which is what these Defendants have ask this Court today to find in their current motion to dismiss. The holdings of the highest courts



1 have held that giving ten hours of mental health treatment per week under an exercise of  
 2 “professional judgment” might not be sufficient mental health treatment to restore a person  
 3 for release. *Kansas v. Hendricks*, 541 U.S. 346 (1997). Even in *Youngberg* itself the federal  
 4 Court said the civil confined person is entitled to “more considerate treatment and conditions  
 5 of confinement” than their criminal counterparts. *Youngberg v. Romeo*, 457 U.S. 307, 322  
 6 (1982); *Jones v. Blanas*, 393 F.3d 918, 926 (9<sup>th</sup> Cir. 2004). How was Bettys given more  
 7 considerate treatment in removing his established ADA accommodation, subjecting him to  
 8 multiple levels of discrimination, humiliation, debasement and degradation to the point  
 9 someone on facility staff had to wipe is bottom for him, which was only necessary because  
 10 these Defendants deprived him of the federally required ADA accommodations that allowed  
 11 Bettys to wipe his own bottom daily, allowed Bettys to shower daily, allowed Bettys to enter  
 and leave buildings without requiring the extra assistance of staff.

12 The Defendant's claim of some exercise of “professional judgment” are not relevant  
 13 in ADA and/or RA actions according to the highest Court in our land's current holdings, as  
 14 professionals exercising judgment cannot supersede federal statutes or Constitutional  
 15 protections afforded disabled persons. The federal statutes, codes and Constitution itself  
 16 would be shallow documents if they could be circumvented by a professional's exercise of  
 17 alleged judgment as this would allow a professional to ignore federal laws designed to  
 18 protect those disadvantage persons like Bettys from discrimination, injury and likely death at  
 19 the hands of professionals claiming to have exercised their judgment. This put another way is  
 20 simply no professional exercising their “professional judgment” could be allowed to  
 21 circumvent the established federal requirements found within both Title-II and Title-III of the  
 22 ADA act and/or the federal statues of the RA act requiring Bettys provided with both  
 reasonable accommodations and physical building modifications as a disabled person.

23 The Defendants have for too long relied on a false belief “professional judgment”  
 24 allows any type of conduct they wish to portray on the civil confined persons held within  
 25 their custody and care, without concern for established federal statutes and/or Constitutional  
 26 rights of those confined, holding that the states grant of sovereign immunity shall always in  
 every circumstance protect each state from every cause of action raised, except under the

1 ADA and/or RA causes of actions lawsuits the highest Court in our country has settled and  
 2 determined that no state has such sovereign immunity protections in discrimination claims  
 3 brought under the ADA and/or RA statutes. *United State v. Georgia*, 546 U.S. 151, 153  
 4 (2006). The motion to dismiss must be denied regarding exercise of “professional judgment,”  
 5 as even when professionals exercise judgments they cannot circumvent established federal  
 6 ADA and/or RA statues or the many Constitutional protections for disabled persons as seen  
 7 attempted or done in the present lawsuit. The motion to dismiss must be denied regarding  
 8 conditions in program Area One.

9 **2. Mr. Bettys failed to state a claim of discrimination for being moved to  
 Program Area One**

10 The state is responsible for providing inmates with “the fundamentals of life, such as  
 11 sustenance, the use of a toilet, and bathing facilities, and elementary mobility and  
 12 communication,” and as such, the ADA requires that these “opportunities” be provided to the  
 13 disabled inmates “to the same extent that they are provided to all other detainees and  
 14 prisoners.” *Armstrong v. Schwarzenegger*, 622 F.3d 1058, 1068 (9<sup>th</sup> Cir. 2010); *Pierce v.*  
 15 *County of Orange*, 526 F.3d 1190, 1215 (9<sup>th</sup> Cir. 2008)(finding ADA violation where  
 16 defendant failed to articulate “any rationale for maintaining inaccessible bathrooms, sinks,  
 17 showers and other fixtures in the housing area and common spaces assigned to mobility and  
 dexterity impaired detainees.”)

18 The Defendants are attempting to elevate the legal requirement for a statement of a  
 19 claim beyond that which is required in the ADA and/or RA independent causes of actions by  
 20 requiring Bettys prove deliberate discrimination to state a claim under the ADA and/or RA  
 21 cause of action standards. “However, Eleventh Amendment does not bar ADA suits in federal  
 22 court against state officials in their official capacities for injunctive relief and damages.”  
 23 *Phiffer v. Columbia River Corr. Inst.*, 384 F.3d 791, 792-93 (9<sup>th</sup> Cir. 2004). The Ninth Circuit  
 24 Court already determined that Bettys need only show intentional discrimination when he is  
 25 requesting to obtain monetary damages in his lawsuit. Herein, the present lawsuit Bettys is  
 26 seeking only injunctive and/or declaratory damage relief in the present lawsuit regarding  
 discrimination he faced under the ADA and/or RA cause of action standards that is the

1 proximate caused of Bettys' multiple physical injuries, therefore Bettys need not prove  
 2 intentional discrimination or deliberate indifference to state a claim under the ADA and/or  
 3 RA cause of action for an injunction to issue. The holding that "compensatory damages are  
 4 available under the ADA where the failure to accommodate is the result of deliberate  
 5 indifference." *Lovell v. Chandler*, 303 F.3d 1039, 1056 (9<sup>th</sup> Cir. 2002)(citing *Duvall v. County*  
 6 *of Kitsap*, 260 F.3d 1124, 1138 (9<sup>th</sup> Cir. 2001) is not relevant to Bettys' claims where he is  
 7 presently seeking no monetary damages against the Defendants.

8 The Defendants, multiple times in their motion to dismiss erroneously address only  
 9 Bettys' "obesity" condition as his disability to the Court to which Bettys now must properly  
 10 object as such error by the Defendants must not be allowed to persist when the Defendants  
 11 know from Bettys second amended complaint that Bettys is walking on a non-union broken  
 12 foot in pain each day, having trouble moving about and breathing from a prolapsed aortic  
 13 valve in his heart, has a massive heart murmur, has degenerative disc issues in his lower  
 14 back; has failing knees, is suffering from diabetic sores on his legs and feet, needs his  
 15 gallbladder removed due to multiple gull-stones; has asama requiring daily breathing  
 16 machine treatments, has mild COPD from years of smoking, with arthritis in his joints, has  
 17 failing eye sight; degenerative jaw bones, multiple rashes under his fat rolls weekly, and has  
 18 fell down numerous times over the last six months all in conjunction with the obese size of  
 19 6'4" at 425 pound. Bettys uses a walker and/or wheelchair daily for more than five years at  
 20 the facility to traverse the grounds, while being refused provision of a hired wheelchair  
 21 pusher provided to other residents by the Defendants when requested by Bettys merely due to  
 22 Bettys humongous size. The Defendants attempt to minimize Bettys condition to minimize  
 the accommodations and/or modifications they must provide to Bettys at the facility, like the  
 customized bed with extra support legs after Bettys went through a living unit floor.

23 The higher Courts have established with regard to ADA and/or RA claims raised by  
 24 prisoner they are properly brought under both Title II and Title III as both titles are a part of a  
 25 complete federal statutory scheme requiring "public entities" and/or "private entities"  
 26 provide accommodations and/or modifications necessary to allow disable person the same  
 access to services, programs or activities as all non-disabled persons. To the extent the

1 Defendants request the Court dismiss claims brought under provisions of Title III the highest  
 2 Court of our land already addressed this matter finding the modification provisions under  
 3 Title III apply to “public entities” the same as private entities. The “construction” provision  
 4 of Title III of the ADA “specifies that the meaning of discrimination includes failure by  
 5 'public entities' described in the general rule to (a) make reasonable modifications; (b)  
 6 provide auxiliary aids and services; and (c) remove barriers consistent with certain  
 7 requirements.....” *Armstrong v. Schwarzenegger*, 662 F.3d 1058, 1063 (9<sup>th</sup> Cir. 2010). The  
 8 Defendants appear aware of the wording of Title III as in their motion to dismiss they are  
 9 asking this Court specifically dismiss all claims brought in conjunction with Title III of the  
 10 ADA act, wherefore Title III contains specifically the definition of discrimination committed  
 by these Defendants.

11 The Defendants wrongfully claim that Bettys does not allege in his second amended  
 12 complaint he was denied services or faced any specific discrimination, yet this is exactly  
 13 what Bettys does clearly allege when he addressed the nurses refusing to wipe his bottom  
 14 after going to the bathroom, doctor failing to provide necessary equipment for his disabilities,  
 15 hosing in non-compliant room. Bettys does make several other references to being denied  
 16 access to a toilet when staff were not available to walk him across the compound to a  
 17 building having a proper toilet, when staff were having sex in the toilet he was supposed to  
 18 use in the middle of the night as he waited till the staff dressed to leave the bathroom, when  
 19 staff were performing formal counts and/or when staff merely refused multiple times to walk  
 20 Bettys off the living unit to a toilet, when staff refused Bettys' multiple request to shower  
 21 sometimes for days, which are found throughout Bettys claims stated in the second amended  
 22 complaint. The evidence will show the jury that for several weeks Bettys was not allowed to  
 23 shower due to no one arranging his use of Program Area Three showers for weeks after his  
 24 move, that memorandums only gave Bettys unrestricted access to a toilet the week prior to  
 25 his being moved back to Program Area Three on January 20, 2020, in contradiction to the  
 26 Defendants claims in their motion to dismiss. The Court directed Bettys not to attach  
 evidence to his second amended complaint that is available on the matters. The Defendants  
 over the months Bettys is housed on Program Area One did make some accommodations that

1 were federally required to be in place the day Bettys was moved to the non-compliant  
 2 housing area, in an attempt to avoid liability in this lawsuit, yet the multiple acts of  
 3 discrimination and multiple injuries that Bettys actually suffered were unaffected by those  
 4 minimal accommodations, whereby the very accommodation is many times the thing itself  
 5 that did create Bettys actual injuries, like those sustained by making Bettys walk to Program  
 6 Area Three on his knowingly broken foot in the ice and snow to shower causing the multiple  
 7 slip and fall injuries of Bettys. The Defendants knew before moving Bettys to Program Area  
 8 One he required many of these ADA accommodations before without staff ensuring they  
 9 were in place before hand to meet Bettys ADA disability needs, which itself is the evil  
 10 intentional discrimination prohibited by the ADA and /or RA statutes. Bettys is not seeking  
 11 any monetary damages from the Defendants that he should presently be seeking as he only  
 12 desires to obtain the injunction tailored to stop all future discrimination from being  
 13 committed by the Defendants at present, as then if they again discriminate against Bettys the  
 14 multiple damages shall be issue immediately protecting Bettys. These violations occurred the  
 15 moment Bettys was denied what the Defendants knew before hand was required to house  
 16 Bettys within their facility, as they made multiple accommodations on Program Area Three  
 17 for Bettys over the prior four years as the needs arose, in addition to installing an ADA type  
 18 toilet in the gym and the visitation center both for Bettys use during accessing those areas,  
 19 while additionally agreeing to the installation of such an ADA toilet at the facility boat dock  
 20 house for off-island medical trips as being required for Bettys use. "Injunctive relief against a  
 21 state agency or official must be no broader than necessary to remedy the Constitutional  
 22 violation." The Motion to dismiss herein must be denied on this issue entirely, as in the light  
 23 most favorable to Bettys he has stated a claim where relief in the form of an injunction can  
 24 issue.

**3. Mr. Bettys adequately stated a prima facia claim of failure to protect related to food service**

Defendant's voluntary concession to Bettys' having stated a claim is excepted.

**4. Mr. Bettys adequately stated a prima facia claim of discrimination for being denied access to seating**

Defendant's voluntary concession to Bettys' having stated a claim is excepted.



## 5. Mr. Bettys has improperly Named the State of Washington as a Defendant

Ordinarily, a plaintiff is not entitled to damages against defendants in their official capacities. *Aholelei v. Department of Public Safety*, 488 F.3d 1144, 1147 (9<sup>th</sup> Cir. 2007) (“the Eleventh Amendment bars suit for money damages in federal court against a state or its agencies and state officials in their official capacities.”) “[I]n so far as Title II [of the ADA] creates a private cause of action for damages against the states for conduct that actually violates the Fourteenth Amendment, Title II validly abrogates the sovereign immunity.” *United State v. Georga*, 546 U.S. 151, 159, 126 S.Ct. 877 (2006). “Proper defendant in an ADA action is the public entity responsible for the alleged discrimination.” *Georga* 546 U.S. at 153. States are public entities within the meaning of the ADA. *Armstrong v. Wilson*, 124 F.3d 1019, 1025 (9<sup>th</sup> Cir. 1997). The fact is a “state official sued in his or her official capacity is, in effect, a suit against the government entity and is an appropriate defendant in an ADA action.” *MirandaB. v. Kitzhaber*, 328 F.3d 1181, 1187-88 (9<sup>th</sup> Cir. 2003); *Kentucky v. Graham*, 437 U.S. 159, 165, 105 S.Ct. 3099 (1985). `Since this is not a §1983 action and the Eleventh Amendment sovereign immunity of the State of Washington is abrogated under the ADA then the State of Washington is a proper Defendant to this action. The Defendants motion to dismiss must be denied on this point, otherwise amendment to include the Department of Social and Health Services-Special Commitment Center is required as they must be the responsible public entity instead of the State of Washington to which they belong as an agency.

#### IV. CONCLUSION

The Defendant motion to dismiss must be denied in its entirety for the reasons stated herein above.

DATED This 27<sup>th</sup> day of January , 2021.

Respectfully Submitted,

John E. Bettys  
John Bettys, Plaintiff, pro se

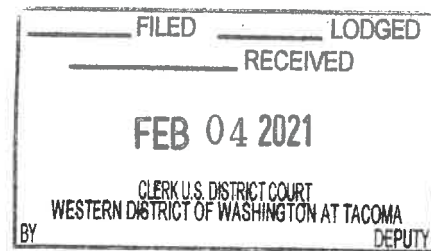
## CERTIFICATE OF SERVICE

Plaintiff, John E. Bettys, hereby certifies that on this 28<sup>nd</sup> day of January, 2021, a true and correct copy of the following documents are mailed postage prepaid:

- Declaration of Service
- Plaintiff's Response to Defendant's Motion to Dismiss at Calendared February 12, 2021

Addressed to the following:

United States District Court  
Attn: Hon. Court Clerk  
1717 Pacific Ave., Room 3100  
Tacoma, WA 98402



Craig B. Mingay, WSBA# 45106  
Amanda Smitley, WSBA# 57420  
Office of the Attorney General  
7141 Clearwater Drive SW  
P.O. Box 40124  
Olympia, WA 98504-0124

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "John E. Bettys", written over a horizontal line.

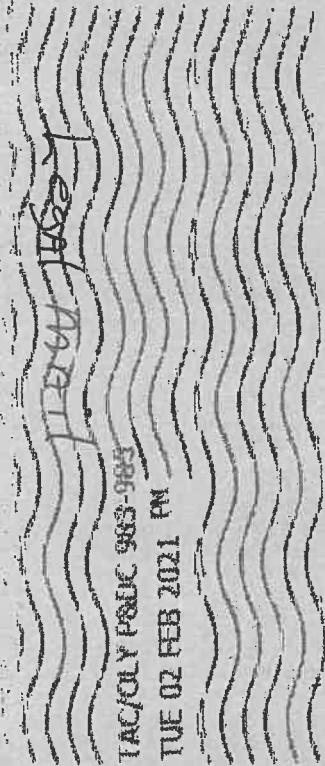
John E. Bettys, plaintiff, pro se  
Special Commitment Center(SCC)  
P.O. Box 88600  
Steilacoom, WA 98388

John Bethys, Rose  
P.O. Box 88608  
Seattle, WA 98188

United States District Court  
Attn: Hon. Court Clerk  
1717 Pacific Ave., Room 3100  
Tacoma, WA

98402

FILED	LODGED
RECEIVED	
FEB 04 2021	
CLERK U.S. DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA	
BY DEPUTY	



U.S. POSTAGE  
PRIME BOWES  
ZIP 98388 \$ 001.60  
02 4W  
0000367520 JAN 29, 2021